

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

JAN. 4, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re Scruples Professional Salon Products, Inc.

---

Serial No. 75/079,106

---

Gregory P. Kaihoi of Fredrikson & Byron, P.A. for Scruples Professional Salon Products, Inc.

Hannah Fisher, Trademark Examining Attorney, Law Office 107  
(Thomas Lamone, Managing Attorney)

---

Before Hairston, Chapman and Wendel, Administrative  
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

An application has been filed by Scruples Professional Salon Products, Inc. to register the mark UN-CURL for a "hair care preparation for straightening hair".<sup>1</sup>

Registration has been refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that

---

<sup>1</sup> Application Serial No. 75/079,106, filed March 27, 1996, alleging a bona fide intention to use the mark in commerce.

the mark UN-CURL when applied to the goods of the applicant, is merely descriptive of them.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm.

The Examining Attorney contends that the term UN-CURL is the equivalent in meaning of the term "straighten"; that the term UN-CURL is a common English verb meaning to straighten curls; and that the term merely describes the function of applicant's hair straightening preparation.

The Examining Attorney submitted (i) the definition in Webster's Ninth New Collegiate Dictionary of the term "uncurl" as "to become straightened out from a curled or coiled position ~vt: to straighten the curls of"; (ii) the definition in Webster's Ninth New Collegiate Dictionary of the term "curl" as a verb "1: to form (as the hair) into coils or ringlets" and as a noun "1: a lock of hair that coils"; and (iii) several excerpts from a Lexis/Nexis search demonstrating use of the word "uncurl" relating to straightening the hair. A few examples of these excerpts include the following:

This was the same guy who, when he heard Jordan was returning to the Bulls, it took three strong men with blow dryers to uncurl Riley's hair. "The San Francisco Chronicle," March 20, 1995;

It's enough to uncurl your hair. Long, stick-straight '60s hair is all the rage. "The Arkansas Democrat-Gazette," July 4, 1991; and

Turner is sleek and remarkably '90s with her sling-back shoes and her natural uncurled fall of hair. "Newsday", March 4, 1990.

Applicant, in urging reversal of the refusal to register, argues that the mark UN-CURL is suggestive, not merely descriptive, of applicant's goods because the mark describes a desired end result of the use of applicant's product, but does not describe the product itself; that the word "uncurl" may apply to the straightening of any curled or curved object, such as a coiled spring, a roll of paper or film;<sup>2</sup> and that any doubt regarding descriptiveness is to be resolved in applicant's favor.

A term is merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it immediately conveys information concerning an ingredient, quality, characteristic or feature thereof, or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

---

<sup>2</sup> Applicant attached to its reply brief the results of a search of the word "uncurl" in the Patent and Trademark Office patent database. The search revealed a listing of 20 patents. This evidence is untimely and will not be considered. See Trademark Rule 2.142(d). We hasten to add that even if we had considered this evidence, it would not change the result herein.

It is not necessary that a term or phrase describe all of the properties or functions of the goods or services in order for it to be considered merely descriptive thereof; rather, it is sufficient if the term or phrase describes a significant attribute or idea about them.

The question of whether a particular term or phrase is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used on or in connection with those goods or services, and the possible significance that the term or phrase is likely to have to the average purchaser of the goods or services because of the manner in which it is used. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). See also, *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

In the present case, based on the evidence described above, we find that the term UN-CURL when applied to applicant's hair care preparation for straightening hair, is merely descriptive of the goods in that it immediately informs prospective purchasers that applicant's goods are a preparation for straightening hair. Specifically, the evidence shows that the word "curl" relates to forming hair

into ringlets, and the meaning of the word "uncurl" is "to become straightened out". See *The Fleetwood Company v. Mende*, assignee of *Tint 'N Set, Inc.*, 298 F.2d 797, 132 USPQ 458 (CCPA 1962) wherein the Court affirmed the Board's dismissal of a petition to cancel the mark TINT 'N SET on the Supplemental Register for hair treating compound based on petitioner's mark TINTZ for hair coloring shampoo, hair rinse, hair coloring, hair color touch-up pencil and cream shampoo, stating that to grant the petition to cancel based on TINTZ (a phonetic spelling of "tints") "would be tantamount to giving [petitioner] the exclusive use of a common English word used in its common meaning to endeavor to identify a hair tinting product." See also, *In re State Chemical Manufacturing Co.*, 225 USPQ 687 (TTAB 1985) wherein the Board affirmed the Examining Attorney's refusal to register the term FOM (the equivalent of "foam") for industrial cleaner for carpets, rugs and upholstery as merely descriptive thereof.

The Board has reviewed the three primary cases relied on by applicant, and we have no disagreement with the general propositions set forth therein. However, the fact situations in the cited cases are specifically different from the facts of the case now before the Board. Also, the marks in issue in the cited cases involve words which are

more fanciful, obscure or general than the term now before the Board.

The cited case of *In re The Realistic Company*, 440 F.2d 1393, 169 USPQ 610 (CCPA 1971), involved a misspelling of the word CURVE, and the Court found (Judge Skelton dissenting) that CURV is not merely descriptive of permanent wave curling solutions because the word "curve" is as suggestive of any article of manufacture that involves a curved shape as it is of permanent wave curling solutions and their intended uses. The case currently before the Board does not involve a misspelling of the word "uncurl"<sup>3</sup>; and the word "curl" with relation to hair care is not a general or ambiguous word as was the word "curve" in relation to hair care products.

The case of *In re C. J. Webb, Inc.*, 182 USPQ 63 (TTAB 1974), involved the Examining Attorney's requirement for a disclaimer of the term BRAKLEEN in applicant's mark CRC BRAKLEEN and design for a chemical composition for cleaning and degreasing automotive brake parts. The Board reversed the requirement for a disclaimer stating the term is not an "unregistrable component" of the composite mark as it is

---

<sup>3</sup> Applicant's inclusion of the hyphen does not change the purchasing public's perception or understanding of the term "uncurl".

suggestive of a desired result of the use of applicant's product. In the case now before the Board the word "uncurl" with regard to a hair care product to straighten the hair is directly descriptive of the function of the product, which is a preparation to straighten or "uncurl" the hair.

Finally, in the case of *In re Universal Water Systems, Inc.*, 209 USPQ 165 (TTAB 1980), the Board reversed the refusal to register the mark PURITY as merely descriptive of water filtering units, water filter cartridges and water softening units holding that the term PURITY, as defined in the dictionary ("the quality or state of being pure") was a "rather abstract concept", and did not describe the goods or the purpose of the goods, but rather was suggestive of the desired result of the use of the goods. In the present case, the word "uncurl" is straight-forward, not abstract. The term UN-CURL relates to hair and the purpose of the goods when used on hair, and would be so understood by the purchasing public.

**Ser. No.** 75/079106

Decision: The refusal to register under Section  
2(e)(1) is affirmed.

P. T. Hairston

B. A. Chapman

H. R. Wendel  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board